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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

3154 #7

No. 812 CHR-CLO

CHRISTIAN CORPORATION,

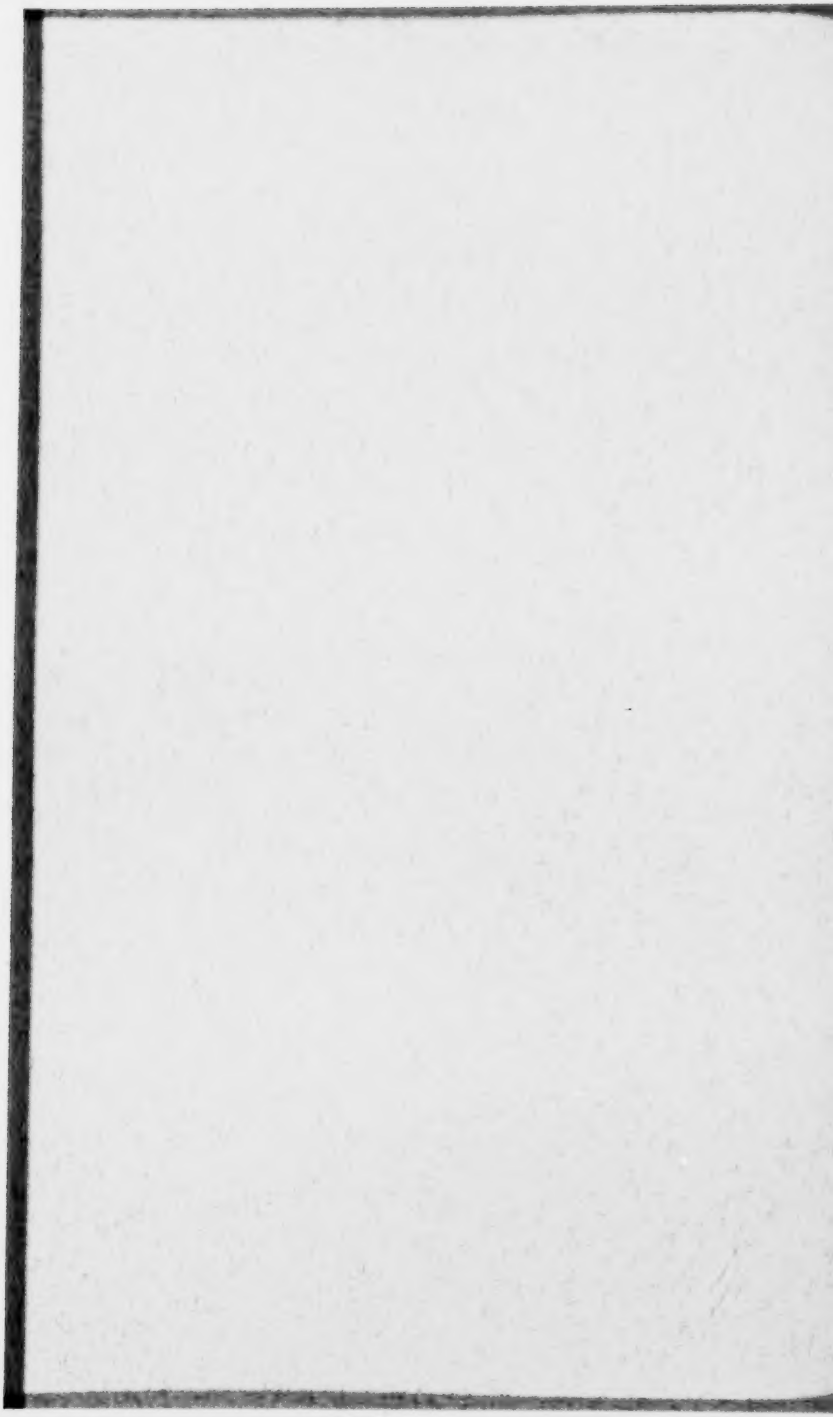
Petitioner,

vs.

COMMONWEALTH OF VIRGINIA AND THE CITY OF RICHMOND.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA AND BRIEF IN SUPPORT THEREOF.

M. A. HUTCHINSON,
Counsel for Petitioner.



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OFFICIAL REPORT.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 812

CHRISTIAN CORPORATION,

Petitioner,

vs.

COMMONWEALTH OF VIRGINIA AND THE CITY OF RICHMOND,

Respondents.

PETITION FOR A WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Christian Corporation, a Virginia corporation, respectfully petitions this Honorable Court for review on a writ of certiorari of the decision of the Supreme Court of Appeals of Virginia, the court of last resort in the Commonwealth of Virginia, in the case entitled *Christian Corporation* v. *Commonwealth of Virginia and the City of Richmond,* which was heard by that court on an application by your petitioner for a writ of error from a judgment of the Circuit Court of the City of Richmond rendered on August 28, 1941 and finally decided by the Supreme Court

of Appeals of Virginia on October 8, 1941 by a denial of the petition for a writ of error to said judgment of the Circuit Court of the City of Richmond, the effect of which as declared by the Supreme Court of Appeals of Virginia in its order was to affirm the judgment of the said Circuit Court.

I.

Your petitioner files with this, its petition, a certified transcript of the record in the case including the proceedings in said case before the Supreme Court of Appeals of Virginia.

II.

A Summary and Short Statement of the Matter Involved.

Petitioner is a Virginia corporation. Its business is that of a sales agent. It does not stock any merchandise. It represents a number of principals who are located outside of the Commonwealth of Virginia and whose places of manufacture are located outside of the Commonwealth of Virginia. It takes orders for goods manufactured by its principals from residents of Virginia. The orders are solicited and when received are sent to your petitioner's principals who pass on the financial responsibility of the persons giving the orders and decide whether the orders will be accepted or rejected. If accepted, petitioner's principals ship the merchandise from the place of manufacture outside of the Commonwealth of Virginia to the purchaser inside Virginia. The merchandise is billed by the principal and petitioner has nothing to do with the billing of such goods. On the 10th of each month petitioner receives a commission from its principals based on the business obtained by petitioner. (See the testimony of L. L. Christian R. 17-20)

Petitioner maintains an office in the City of Richmond. The office has on the door petitioner's name and the name

of Mr. John Christian who has an office in the suite occupied by petitioner. The letterheads of petitioner in addition to containing its name, have the words "Manufacturers Agents." (R. 17-18)

The Commonwealth assessed petitioner as a commission merchant under Section 174 of the Tax Code with a license tax in the amount of One Hundred Seventy-five Dollars and Ninety Cents ($175.90). The City of Richmond assessed petitioner with a City license tax of One Hundred Twelve Dollars and Fifty-eight Cents ($112.58) plus a penalty of Five Dollars and Sixty-three Cents ($5.63) under Section 22 of the City License Ordinance. These assessments were based on the interstate business of petitioner. (R. 14-16)

Petitioner paid the State license tax and then filed a petition under Section 410 of the State Tax Code to recover the same. The City license tax had not been paid by petitioner and a petition was filed praying for an exoneration from the payment of the same. Both petitions were based on the ground that petitioner's business was interstate commerce and that it was not subject to either State or municipal taxes for the privilege of engaging in interstate commerce. (R. 6-7, 9-10)

In the petition filed with the Supreme Court of Appeals of Virginia your petitioner pointed out that the only issue involved in the cases at bar was the question of whether persons engaged in interstate commerce may be taxed by the Commonwealth of Virginia and the City of Richmond for the privilege of engaging in interstate commerce. These cases present a question which arises under the Constitution of the United States and involves rights of the petitioner which arise under that instrument. The attention of the Supreme Court of Appeals of Virginia was specifically directed to the fact that the question involved is

one of constitutional law and that it was the contention of petitioner that the license taxes imposed upon it by the Commonwealth and the City of Richmond were void exactions as being in conflict with the Constitution of the United States as construed by this Court which is the final arbiter as to the question presented by the issue here. (R. 3)

The errors assigned in the petition for a writ of error presented by your petitioner to the Supreme Court of Appeals of Virginia were as follows: (R. 3)

> "1. Petitioner assigns as error the action of the Trial Court in holding that its business, although interstate commerce, was subject to license taxation by the Commonwealth and the City of Richmond for the privilege of carrying on such business.
> "2. The Commonwealth's statute and the City Ordinance, under which petitioner is taxed as construed by the trial Court, are in conflict with the Commerce Clause of the Federal Constitution, and therefore void enactments so far as they affect interstate commerce or those engaged in such commerce.
> "3. In holding petitioner subject to taxation the trial Court overruled the decisions of the Supreme Court of the United States, which Court is the final arbiter as to rights arising under the Federal Constitution and its adjudications of such rights binding on all Courts and not to be disregarded."

The petition for a writ of error in the cases at bar was filed with the Supreme Court of Appeals of Virginia on or about the 5th day of September, 1941 within the time allowed by law for the filing of the same. The petition and record were under consideration by that court until October 8, 1941, when the writ was denied (R. 32). The order entered by the Supreme Court of Appeals after reciting that the matter had been maturely considered reads:

> "* * * the Court being of opinion that the said judgment is plainly right doth reject said petition and re-

fuse said writ of error, the effect of which is to affirm the judgment of the said circuit court."

III.

The basis upon which it is contended that this Court has jurisdiction upon application for a writ of certiorari to review the judgment in question.

It is believed that the foregoing statement of facts fully discloses that petitioner is engaged in interstate commerce and that the license taxes imposed upon it by the Commonwealth of Virginia and the City of Richmond were levied upon it solely for the privilege of engaging in interstate commerce. Petitioner relies upon the Constitution of the United States, Article I, Section 8, Clause 3 and the decisions of this Court construing and applying that Section of the Constitution to facts similar to those in the cases at bar, namely:

Stockard v. *Morgan*, 185 U. S. 27, 46 L. ed. 785, 22 Sup. Ct. 576 (1902).

Robins v. *Shelby County Taxing District*, 120 U. S. 489, 30 L. ed. 694, 7 Sup. Ct. 592, 1 Inters. Com. Rep. 45 (18—).

Brown v. *Maryland*, 12 Wheat. 419, 6 L. ed. 678 (1827).

Welton v. *Missouri*, 91 U. S. 275, 23 L. ed. 347 (1875).

Davis v. *Virginia*, 236 U. S. 697, 59 L. ed. 795, 35 Sup. Ct. 497 (1915).

Stewart v. *Michigan*, 232 U. S. 665, 58 L. ed. 786, 34 Sup. Ct. 476 (1914).

Crenshaw v. *Arkansas*, 227 U. S. 389, 57 L. ed. 565, 33 Sup. Ct. 294 (1913).

Rogers v. *Arkansas*, 227 U. S. 401, 57 L. ed. 569, 33 Sup. Ct. 298 (1913).

Caldwell v. *North Carolina*, 187 U. S. 622, 47 L. ed. 336, 23 Sup. Ct. 229 (1903).

Real Silk Hosiery Mills v. *Portland*, 268 U. S. 325, 69 L. ed. 982, 45 Sup. Ct. 525 (1925).

Cooney v. *Mountain States Telephone & Telegraph Company*, 294 U. S. 384, 55 Sup. Ct. 477 (1935).

Gwin, White and Prince v. *Henneford*, 305 U. S. 434, 59 Sup. Ct. 325, 327 (1939).

McGoldrick v. *Berwind-White Coal Mining Company*, 309 U. S. 33, 60 Sup. Ct. 388, 397 (1940).

The effect of the ruling of the Circuit Court of the City of Richmond and of the Supreme Court of Appeals of Virginia in affirming the judgment of the Circuit Court of the City of Richmond was to deny your petitioner the protection of the Commerce Clause of the United States Constitution and to overrule the decisions of this Court cited above in which it was held that persons engaged in business similar to that conducted by your petitioner were protected from taxation by the Commerce Clause of the United States Constitution from taxation by States and municipalities for the privilege of engaging in interstate commerce.

IV.

Statement of the grounds upon which it is contended that the questions involved are substantial.

Your petitioner is engaged in interstate commerce. It has been taxed by the Commonwealth of Virginia and the City of Richmond for the privilege of engaging in interstate commerce. The license taxes imposed upon petitioner for the privilege of engaging in such commerce are under the alleged authority of Section 174 of the Tax Code of Virginia and Section 22 of the Richmond City Ordinance (R. 3, 4). Both the statute and the ordinance impose a flat license tax and an additional tax based upon the percentage of the gross earnings in excess of One Thousand ($1,000.00) Dollars.

When a State or municipality deprives one of a right guaranteed him by the Constitution of the United States the question involved is always substantial. As was said by this Court in *Alpha Portland Cement Company* v. *Massachusetts*, 268 U. S. 203, 69 L. ed. 916, 44 A. L. R. 1219 (1925):

> "The amount demanded is unimportant when there is no legitimate basis for the tax. * * *."

V.

The stage in the proceedings in the court of first instance and in the Appellate Court at which and in the manner in which the Federal questions sought to be reviewed were raised.

The Federal question here invoked was raised in the petition filed in the Circuit Court of the City of Richmond praying for the correction of the assessments made against petitioner (R. 6-7, 9-10). The question was therefore raised at the earliest stage of the proceeding. The trial court denied the relief prayed for in the petition (R. 29-30). Petitioner thereupon applied to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of the Circuit Court. The question here involved was again raised in said petition for a writ of error, the entire petition (R. 5-13) being devoted to a statement of facts, the assignments of error and a discussion of the decisions of this Court which have construed the Commerce Clause of the United States Constitution applied to facts similar to those in the cases at bar.

It has been decided by the Supreme Court of Appeals of Virginia that a petition for a writ of error is in the nature of a pleading—*Thurston* v. *Woodward*, 139 Va. 315 (1924). The method of raising the Federal question sought to be reviewed was therefore raised by the pleadings filed in the

trial court, by the evidence introduced therein, and, in the Appellate Court by the petition for a writ of error, which is in the nature of a pleading, accompanied by a certified copy of the transcript of the record of the cases in the Circuit Court of the City of Richmond. A certified copy of the record of the entire proceedings in the trial court and in the Supreme Court of Appeals of Virginia accompanies this petition for a writ of certiorari. The issue raised by petitioner was passed upon by the Circuit Court of the City of Richmond by denying to petitioner the relief prayed for (R. 29-30). The Supreme Court of Appeals of Virginia passed upon the matter by denying to petitioner a writ of error to said judgment, the effect of which was to affirm the judgment of the said Circuit Court (R. 32). The opinion of the Circuit Judge (R. 30-31) clearly shows that the said Circuit Court decided on the authority of *Dunston* v. *City of Norfolk*, 177 Va. 689, decided by the Supreme Court of Appeals of Virginia on June 9, 1941, that one engaged in interstate commerce was no longer protected from State and local taxation for the privilege of engaging in such commerce. The Supreme Court of Appeals of Virginia gave no reason in its order denying petitioner's application for a writ of error, other than the statement, that after having examined the petition and the transscript of the record and maturely considered the same that the Court was of the opinion that the judgment of the Circuit Court was plainly right (R. 32). Examination of the opinion of the majority of the Court in *Dunston* v. *City of Norfolk*, 177 Va. 689 (1941) reveals the fact that the majority of the Court holds that persons engaged in interstate commerce are now subject to license taxes imposed by the Commonwealth of Virginia and its localities for the privilege of engaging in such commerce. The Chief Justice and one of the Associate Justices dissented, 177 Va. 701-709.

The trial court delivered a written opinion in the case, (R. 30-32) that part relating to the question here raised being found in the paragraph beginning near the bottom of page 31-32. The Supreme Court of Appeals did not deliver an opinion in the case but entered an order denying the application for a writ of error (R. 32). The opinion in the Case of *Dunston* v. *City of Norfolk* referred to by the trial court in its opinion is found in 177 Va. 689, 701. The dissenting opinion of the Chief Justice and of Mr. Justice Browning is found in 177 Va. 701-709.

VI.

The Dates of the Orders Complained Of.

The petitions were filed in the Circuit Court of the City of Richmond on April 10, 1941 (R. 5-8). The relief prayed for was denied by order of the Circuit Court of the City of Richmond entered on August 28, 1941 (R. 29-30). A writ of error was applied for on September 5, 1941 and the petition for a writ of error was denied on October 8, 1941:

> "* * * the effect of which is to affirm the judgment of the said Circuit Court." (R. 32)

A petition may be presented to the Supreme Court of Appeals of Virginia for a writ of error to any final judgment which shall have been rendered not more than four (4) months before the petition is presented. Section 6337 of the Code of Virginia, 1919 as amended by the Acts of Assembly of Virginia, 1938, page 134, 1940 Supplement to the Virginia Code of 1936 Annotated (Michie) page 449.

VII.

Assignments of Error.

Your petitioner assigns as error the same errors assigned by it in its application for a writ of error filed with the

Supreme Court of Appeals of Virginia and quoted above, the grounds thereof being that the taxes levied upon it deprives it of a right to which it is entitled under the Commerce Clause of the Constitution of the United States.

Your petitioner respectfully points out to the Court that the purpose of incorporating the Commerce Clause into the Constitution of the United States was to prevent the several States from interfering with and throttling commerce between the States. At an early date in our history this Court declared that no State could levy a tax upon any person for the privilege of engaging in interstate commerce. This rule has been applied by this Court in an unbroken line of decisions from *Brown* v. *Maryland,* 12 Wheat. 419, 6 L. ed. 678.

Under the Commerce Clause of the United States Constitution as interpreted by this Court, the United States has developed into the greatest and richest nation in the world. Those familiar with the subject have little doubt that the Commerce Clause of the United States Constitution as construed by this Court in the past, has been the chief contributing factor to the development of interstate commerce and to the free exchange of products of this country in all parts thereof and upon which the prosperity and general welfare of the nation is founded. So dangerous have tax laws of the type enforced here been regarded by this Court, that it has heretofore always condemned every law that has heretofore come before it which imposed a levy for the privilege of carrying on interstate commerce. Nowhere in the reports of this Court can there be found a decision which holds that a State or its localities can levy a tax upon any person for the privilege of engaging in interstate commerce. All of the decisions of this Court are to the contrary. Even the opinion in *McGoldrick* v. *Berwind White Coal Mining Company,* 307 U. S. 33, 60 S. Ct. 388, 64 L. ed. 565 (1940) has recognized the wisdom, justice and validity of this rule.

A supporting brief accompanies this petition.

Your petitioner, therefore, respectfully prays that this Honorable Court will review the decision of the Supreme Court of Appeals of Virginia complained of in the cases at bar on a writ of certiorari and that it will set aside and annul the decision of the Supreme Court of Appeals of Virginia and declare that your petitioner is not subject to taxation either by the Commonwealth of Virginia or by the City of Richmond for the privilege of engaging in interstate commerce. And your petitioner will ever pray, etc.

CHRISTIAN CORPORATION,
A Virginia Corporation,
By L. L. CHRISTIAN,
Vice-President.

M. A. HUTCHINSON,
Counsel for Petitioner.